

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GALINA SEEBROOK; MARIA ISABEL  
BELTRAN; NICOLLE DISIMONE; and  
KRISTEN HARTMAN,

Plaintiffs,

v.

THE CHILDREN'S PLACE RETAIL  
STORES, INC.,

Defendant.

No. C 11-837 CW

ORDER GRANTING  
PLAINTIFFS' MOTION  
FOR ATTORNEYS'  
FEES (Docket No.  
74)

Before the Court is Plaintiffs' motion for attorneys' fees, expenses and incentive award payments. The Court ordered supplemental briefing on the effect of the Ninth Circuit's recent decision in In re HP Inkjet Printer Litigation, 716 F.3d 1173 (9th Cir. 2013), on this settlement. Having considered all of the parties' papers and oral argument on the motion, the Court GRANTS Plaintiffs' motion.

DISCUSSION

A. Whether the Settlement Agreement is a Coupon Settlement Under CAFA

The terms of the settlement provide that class members receive the choice of a ten dollar gift certificate with no minimum purchase required or a thirty-five percent off voucher at Defendant The Children's Place Retail Stores, Inc. At issue is whether the settlement qualifies as a coupon settlement, thus

1 triggering the provisions of 28 U.S.C. § 1712, the Class Action  
2 Fairness Act (CAFA).

3 In Inkjet, the Ninth Circuit addressed the calculation of  
4 attorneys' fees in the context of a coupon settlement under CAFA.  
5 The court held that, under § 1712(c), "If a settlement gives  
6 coupon and equitable relief and the district court sets attorneys'  
7 fees based on the value of the entire settlement, and not solely  
8 on the basis of injunctive relief, then the district court must  
9 use the value of the coupons redeemed when determining the value  
10 of the coupons part of the settlement." Id. at 1184.

11 Although CAFA defines various terms, it does not define what  
12 constitutes a "coupon." See 28 U.S.C. § 1711. "Courts have often  
13 blurred the distinction between 'coupons' and 'vouchers' and have  
14 considered, at times, that the terms are equivalent . . . . The  
15 distinction between a coupon and a voucher is that a coupon is a  
16 discount on merchandise or services offered by the defendant and a  
17 voucher provides for free merchandise or services." Foos v. Ann,  
18 Inc., 2013 WL 5352969, \*4 (S.D. Cal.).

19 In the present case, the thirty-five percent discount at The  
20 Children's Place Retail Stores is indisputably a coupon. At issue  
21 is whether the ten dollar merchandise certificate provided in the  
22 alternative by the settlement is a coupon. See Foos, 2013 WL  
23 5352969 at \*7 (noting that "coupon settlement" is not defined in  
24 CAFA and finding that the option of a coupon does not "transform a  
25 class action settlement into a coupon settlement under CAFA").  
26 The parties contend that, whereas the Inkjet settlement provided  
27 non-transferable "e-credits" in the amount of two to six dollars,  
28 the settlement here provides a transferable ten dollar merchandise

1 certificate without a minimum purchase amount. Moreover, the  
2 parties note that "[m]ore than 50% of the merchandise at  
3 California Children's Place stores is priced for purchase at \$10  
4 or less." Parties' Joint Letter Brief, Docket No. 72 at 2. In  
5 contrast, the parties argue that, in Inkjet, nothing could be  
6 obtained for the coupon amounts. Id. The Inkjet court further  
7 noted evidence that the prices charged on the defendant's website  
8 --"the only retailer that will accept the settlement coupons--are  
9 higher than those charged by other retailers." 716 F.3d at 1179  
10 n.6.

11 Other courts have found that CAFA does not apply to  
12 settlements that offer vouchers for free products. Such cases  
13 distinguish vouchers from discounts on products where class  
14 members are forced to purchase the products and pay the difference  
15 between the full and coupon-discounted price. Foos, an extremely  
16 similar case, recently assessed a settlement in which class  
17 members were given the option of a fifteen dollar certificate and  
18 a discount at the defendant store. The court found that this did  
19 not constitute a coupon settlement because class members "have the  
20 opportunity to receive free merchandise, as opposed to merely  
21 discounted merchandise." Foos, 2013 WL 5352969, at \*3. Employing  
22 similar reasoning, the court in Browning v. Yahoo! Inc., 2007 WL  
23 4105971 (N.D. Cal.) concluded that in-kind relief was not a coupon  
24 because it "does not require class members to spend money in order  
25 to realize the settlement benefit." Browning, 2007 WL 4105971, at  
26 \*5. Other courts disagree. In Fleury v. Richemont North America,  
27 Inc., 2008 WL 3287154 (N.D. Cal.), for instance, the court stated  
28 that a coupon could encompass a "noncash benefit" that "allows a

1 consumer to buy an entire product." Fleury, 2008 WL 3287154, at  
2 \*2. Nonetheless, because much of the merchandise at Children's  
3 Place stores is priced for purchase at ten dollars or less, class  
4 members do not need to spend money in order to realize the  
5 settlement benefit.

6 Accordingly, the Court finds that the ten dollar certificate  
7 is not a coupon and thus does not trigger the provisions of 8  
8 U.S.C. § 1712. Moreover, as the parties point out, unlike Inkjet,  
9 which involved a nationwide class with multiple claims, the  
10 instant settlement involves a California class and a single state  
11 law claim under California Civil Code § 1747.08. The parties note  
12 that California law provides an independent statutory basis for  
13 the award of attorneys' fees in cases resulting in the  
14 "enforcement of an important right affecting the public interest."  
15 Cal. Code Civ. Proc. § 1021.5. Fees awarded pursuant to § 1021.5  
16 are determined under the lodestar method. In addition, here,  
17 class members suffered no actual out-of-pocket economic loss. The  
18 Court reviews Plaintiffs' request for attorneys' fees under the  
19 lodestar method.

20 B. Calculation of Attorneys' Fees

21 The parties have agreed that class counsel will receive  
22 \$335,000.00 in attorneys' fees and costs. Rule 23(h) of the  
23 Federal Rules of Civil Procedure provides, "In a certified class  
24 action, the court may award reasonable attorney's fees and  
25 nontaxable costs that are authorized by law or by the parties'  
26 agreement." Attorneys' fees provisions included in proposed class  
27 action agreements must be "fundamentally fair, adequate and  
28

1 reasonable." In re Bluetooth Headset Products Liab. Litig., 654  
2 F.3d 935, 941 (9th Cir. 2011).

3 Reasonable attorney's fees must be calculated using the  
4 "lodestar" method. "The 'lodestar' is calculated by multiplying  
5 the number of hours the prevailing party reasonably expended on  
6 the litigation by a reasonable hourly rate." Morales v. City of  
7 San Rafael, 96 F.3d 359, 363 (9th Cir. 1996).

8 Here, pursuant to the Court's request on November 7, 2013,  
9 class counsel provided an alternative calculation reducing the  
10 hourly fee of \$675.00 to \$650.00 and adjusting the lodestar.  
11 Docket No. 80 at 4. Class counsel's adjusted lodestar including  
12 unreimbursed costs is \$404,455.63 through August 27, 2013. The  
13 new lodestar amount remains higher than the \$335,000.00 amount  
14 sought.

15 Having reviewed the evidentiary materials Plaintiffs have  
16 provided, the Court finds that the reduced hourly rates are  
17 reasonable. Counsel's hours are supported with declarations and  
18 detailed time records setting forth the hours expended, categories  
19 of the hours expended, and the dates on which the time was  
20 expended. The Court finds that a \$335,000.00 award for class  
21 counsel's fees, costs and expenses of litigation is reasonable.

22 C. Fees, Expenses, and Incentive Award Payments

23 The Court grants Plaintiffs' unopposed request of \$2,750  
24 incentive payments to compensate class representatives Galina  
25 Seebrook, Maria Isabel Beltran, Nicolle DiSimone, Kristen Hartman  
26 and Mario Arellano for their services as court appointed class  
27 representatives. The awards are reasonable given the amount of  
28 time and effort that they have spent in litigating this case.

1 Based on the foregoing, IT IS ORDERED that Plaintiffs' motion  
2 for attorneys' fees and costs is granted.

3  
4 IT IS SO ORDERED.

5 Dated: 12/4/2013

  
CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California